

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
RICHARD FRASER d/b/a)	
HIDDEN SPRINGS RESORT)	
)	
RESPONDENT)	CASE NO. WPC07-0124

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "Division") by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Department").

II.

Richard Fraser (hereinafter the "Respondent") is the developer of Hidden Springs Resort comprising approximately 140 acres of land located on Nucum Hollow Road in Sevier County (hereinafter the "site"). Service of process may be made on the Respondent at 1576 Nucum Hollow Road, Sevierville, Tennessee, 37862.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 et seq., the Water Quality Control Act, (hereinafter the “Act”) has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the State resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the Official Compilation Rules and Regulations of the State of Tennessee, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. §69-3-107(13), the Commissioner may delegate to the Director of the Division of Water Pollution Control any of the powers, duties, and responsibilities of the Commissioner under the Act.

IV.

The Respondent is a “person” as defined at T.C.A. §69-3-103(20) and, as herein described, has violated the Act.

V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage

under a permit from the Department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (TNCGP) may be obtained by submittal of a Notice of Intent (NOI), a Storm Water Pollution Prevention Plan (SWPPP), and an appropriate fee.

VI.

Pursuant to Tennessee Code Annotated § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VII.

Seaton Branch and its unnamed tributaries, referred to herein, are “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state are classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications for Surface Waters,” is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, these waters are classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

FACTS

VIII.

On February 5, 2003, coverage under the TNCGP was granted to the Respondent under tracking number TNR130198.

IX.

On January 20, 2006, division personnel inspected the site and observed several violations of the permit and the Act. Violations of the permit included the following items: garbage debris and scrap metal had been disposed of in the fill areas; erosion prevention and sediment control (EPSC) measures in the approved SWPPP had not been implemented; active grading was observed in areas beyond the boundaries of the approved SWPPP; and the EPSC measures onsite were not adequate to prevent sediment loss nor were the existing measures properly maintained. In addition, the unnamed tributary to Seaton Branch had been severely impacted due to sediment loss from the site resulting in a condition of pollution.

X.

On February 3, 2006, division personnel issued the Respondent a Notice of Violation (NOV) for violations observed during the January 20, 2006, site inspection. In the NOV, division personnel requested that the Respondent submit a plan to bring the site into compliance no later than April 30, 2006.

XI.

On March 30, 2006, personnel from the Sevier County Stormwater Management

Office visited the site regarding construction of a sediment basin. During the inspection county personnel noted that fill material from the road construction was being used to fill a defined channel with existing flow below the road. County personnel also noted on their inspection report that the overall condition of the site was poor and that additional EPSC measures were needed to stabilize the slopes and prevent further sediment from leaving the site.

XII.

On June 15, 2006, division personnel inspected the site and observed that the violations previously cited in the February 3, 2006, NOV had not been addressed. The site remained unstable, with large quantities of sediment eroding off the site and into waters of the state resulting in a condition of pollution. In addition, the Respondent had not sent in a revised SWPPP as previously requested.

XIII.

On June 22, 2006, division personnel sent the Respondent a NOV citing the aforementioned violations, along with a detailed list of specific corrective actions needed to bring the site into compliance. It was requested that the Respondent arrange to attend a compliance review meeting (CRM) at the Knoxville Environmental Field Office (K-EFO).

XIV.

On August 1, 2006, division personnel met with the Respondent and his engineer

at the K-EFO to discuss the corrective actions needed to bring the site into compliance. During the CRM division personnel discussed with the Respondent the proper use and placement of silt fencing, check dams, and what would be necessary to properly stabilize the site. Division personnel requested that the Respondent develop a revised SWPPP detailing the actual site conditions, future development plans, and EPSC measures necessary to prevent further sediment from leaving the site. Division personnel also requested that the Respondent work with the Sevier County Road Department to clean out the culvert along the road that had been filled with sediment.

XV.

On August 3, 2006, division personnel sent the Respondent a summary of the items discussed at the aforementioned CRM held on August 1, 2006.

XVI.

On February 3, 2007, division personnel and county personnel performed a joint inspection of the site. Little improvement was noted since the previous inspection. The site still lacked appropriate EPSC measures and an updated SWPPP reflecting the current site conditions had not been submitted.

XVII.

On March 23, 2007, division personnel inspected the site and observed that the roadway had not been stabilized. A small amount of gravel had been placed on the road but not enough to prevent erosion from occurring. The drainage ditches along the sides of

the road were still filled with sediment and no functional check dams had been installed as had previously been agreed upon at the CRM.

XVIII.

On April 30, 2007, division personnel sent the Respondent a NOV for the violations observed during the March 23, 2007, inspection and requested that the Respondent submit an updated SWPPP.

XIX.

On May 10, 2007, division personnel inspected the site and observed no improvement since the previous inspection. The roads remained unstable with most of the roadbed consisting of bare soil. The ditches alongside the road were still filled with sediment and lacked the check dams necessary to slow the stormwater runoff. Additional sediment deposits were observed in the unnamed tributary to Seaton Branch.

XX.

On May 16, 2007, division personnel sent the Respondent a NOV citing the violations observed on May 10, 2007, and again requested that an updated SWPPP be submitted to the Division.

XXI.

On July 3, 2007, Mr. Fraser submitted a revised SWPPP reflecting current conditions at the site including the additional disturbed area outside the previous site

boundary.

XXII.

On August 27, 2007, division personnel issued the Respondent a Notice of Coverage (NOC) for the additional acreage based upon the revised SWPPP sent on July 3, 2007.

VIOLATIONS

XXIII.

By violating the terms and conditions of the TNCGP, the Respondent has violated T.C.A. Sections 69-3-108 (a)(b) and 69-3-114(b), which states:

T.C.A. §§69-3-108(a)(b) state:

- (a) Every person who is or is planning to carry on any of the following activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.
- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
 - (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
 - (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological

or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. § 69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XXIV.

By discharging sediment into waters of the state that resulted in a condition of pollution, the Respondent has violated T.C.A. §69-3-114(a), and §69-3-114(b), as referenced above.

T.C.A. § 69-3-114(a) states:

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XXV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENTS to the Respondent:

1. The Respondent shall, within 30 days of receipt of this Order and Assessment, install adequate EPSC measures to prevent further sediment from migrating off the site and send documentation to the Division that these measures have been installed. Documentation shall be sent in duplicate to the manager of the Division's K-EFO located at 3711 Middlebrook Pike, Knoxville, Tennessee 37921, and to the manager of the Enforcement and Compliance Section of Water Pollution Control at 401 Church Street, 6th Floor L&C Annex, Nashville, Tennessee 37243.
2. The Respondent shall maintain appropriate EPSC measures to ensure that no additional material leaves the site and enters waters of the state. The EPSC measures shall be maintained until permanent erosion preventive vegetative cover is established.
3. The Respondent shall, within 6 months of receipt of this Order and Assessment, attend a Fundamentals of Erosion and Sediment Control Workshop provided by the Tennessee Department of Environment and Conservation, and submit

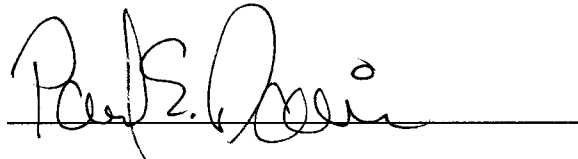
documentation of successful completion to the K-EFO and a copy to the manager of the Enforcement and Compliance Section of Water Pollution Control at the addresses listed in Item 1, above. Information may be found on the program website at <http://www.tnepsc.org/>.

4. The Respondent is hereby assessed a CIVIL PENALTY in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), payable as follows:
 - a. The Respondent shall, within 30 DAYS of receipt of this Order and Assessment, pay to the Division THIRTY THOUSAND DOLLARS (\$30,000.00).
 - b. The Respondent shall pay FOURTEEN THOUSAND DOLLARS (\$14,000.00) to the Division in the event the Respondent fails to comply with Item 1 above, to be paid within 30 days of default.
 - c. The Respondent shall pay FORTY TWO THOUSAND DOLLARS (\$42,000.00) to the Division, in the event the Respondent fails to comply with Item 2 above, to be paid within 30 days of default.
 - d. The Respondent shall pay FOURTEEN THOUSAND DOLLARS (\$14,000.00) to the Division in the event the Respondent fails to comply with Item 3 above, to be paid within 30 days of default.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Issued by the Director of the Division of Water Pollution Control on this 10th day of October 2007.

A handwritten signature in black ink, appearing to read "Paul E. Davis", is written over a horizontal line.

PAUL E. DAVIS, P.E.

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548". If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low- income individuals may be eligible

for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Unit, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243.